FILE COPY

MAY 24 1943
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 5 Original

THE STATE OF COLORADO,
Complainant,

vs.

THE STATE OF KANSAS AND THE FINNEY COUNTY WATER USERS' ASSOCIATION, A CORPORATION,
Defendants.

REPORT AND RECOMMENDATIONS OF THE SPECIAL MASTER.

INDEX.

	Page
Certificate of Special Master	23
Certificates of Stenographic Reporter	636, 7074 R.
Conclusions of law of the Special Master	14
Established principle applicable to the rights of the parties	1
Exhibits of Complainant	(1 to 233, inc.)
Exhibits of Defendants	(1 to 135, inc.)
Findings of fact of Special Master	3
Final submission of the case	2
Hearing on motion to take and consider additional evidence	6366 R.
Order and opinion of Special Master on Motion to take additional testimony	6452 R.
Order of reference to Special Master	6364 R.
Procedure in taking testimony before the Special Master and submission of the case	2
Recommendations of Special Master of a decree	19
Testimony taken before the Stenographic Commissioner appears in volumes 1 to 36, Inc.	7 to 6361 R.
Testimony taken before Special Master appears in volumes 37 to 39, Inc.	6469 to 7173 R.
The names of witnesses and record of their evidence for both the Complainant and Defendant appears in the indexes of Reporter in each volume of the testimony.	

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 5 Original

THE STATE OF COLORADO,
Complainant,

vs.

THE STATE OF KANSAS AND THE FINNEY COUNTY WATER USERS' ASSOCIATION, A CORPORATION,
Defendants.

REPORT AND RECOMMENDATIONS OF THE SPECIAL MASTER.

To the Honorable Supreme Court of the United States:

I have the honor to submit herewith my report of findings of fact, conclusions of law, and recommendations for a decree in the adjustment of the use of the waters of the Arkansas River under the order of the Court of May 4, 1942, together with the testimony and exhibits taken.

Respectfully submitted,

CHARLES C. CAVANAH,
Special Master.

May 1, 1943.

Established Principle Applicable In a Suit Between States Involving Interstate Waters. The principle applicable in a suit between States involving interstate waters

is that each state is entitled to its equitable share of the benefits derived from such waters, and that an equitable apportionment of the water supply and flow of the Arkansas River and its tributaries as between the State of Colorado and the State of Kansas should be made. *Kansas* v. *Colorado*, 206 U. S. 46, 27 Sup. Ct. 655. *Missouri* v. *Illinois and The Sanitary District of Chicago*, 200 U. S. 496. *Georgia* v. *Tennessee Copper Co.*, 206 U. S. 230-237. *Wyoming* v. *Colorado*, 259 U. S. 419, 49 Sup. Ct. 552. *Connecticut* v. *Massachusetts*, 282 U. S. 660, 51 Sup. Ct. 286. *State of New Jersey* v. *State of New York*, 283 U. S. 336, 51 Sup. Ct. 478. *Hinderlider* v. *La Platta River and Cherry Creek Ditch Company*, 304 U. S. 92, 58 Sup. Ct. 803.

Procedure in Taking the Testimony and Final Submission of the Case. The taking of testimony was commenced on November 5, 1929, and continued at different places and times before the stenographic Commissioner appointed by the Court, until December 21, 1939, as appears in volumes one to thirty-six inclusive, and thereafter continued before the Special Master as appears in volumes 37 to 39 inclusive of the transcript of the evidence, which sessions were held at Denver, Colorado, on October 19, 1942 and at Topeka, Kansas, on December 14, 1942, after order of the Special Master of July 11, 1942, allowing the taking of additional testimony, and both parties having rested, the case was finally submitted after filing of briefs and oral arguments at Boise, Idaho, on March 22, 1943.

The evidence is voluminous and conflicting on many of the material issues of fact and presents a history of the Arkansas River, the territory through which it runs, its origin, tributaries, source of water supply, length, course and consumption of water therefrom.

Findings of Fact.

The cause having been originally filed in the Supreme Court of the United States and referred to the Special Master under order of May 4, 1942, directing him to consider the testimony which had been taken by the stenographic Commissioner, and to take such additional testimony as may be deemed necessary and to make findings of fact and conclusions of law and recommendations for a decree, and after a consideration of the evidence, briefs and arguments of counsel, the Special Master finds and concludes the facts to be as follows:

First

The State of Colorado was admitted in to the Union on August 1, 1876 and the State of Kansas was admitted on January 29, 1861, and the defendant, The Finney County Water Users' Association is a corporation organized, chartered and doing business in the State of Kansas. The character of the soil, climate and precipitation in the Arkansas River basin appears to be, that in Colorado and Kansas the soils in both areas are well suited to irrigation and in general western Kansas soils run much lower in gravel and sand, and higher in silt content than those in the eastern Colorado area, and the more porous soils such as exist in Colorado, plants find it easier to absorb moisture from the soils than they do in the more compact soils in western Kansas and evaporation there is less and soils such as exist in western Kansas area will retain larger quantities of water without loss by deep percolation. The mean average annual temperatures in the Kansas area range from two to five degrees higher than in the Colorado area, and the rainfall there is greater than in Colorado.

SECOND

Course of the Arkansas River. It is one of the principal tributaries of the Mississippi River and it and its tributaries are non-navigable streams arising among the higher ranges of the Rocky Mountains and is formed by the junction of the branches known as East Fork and Tannesses Fork with Lake Fork, at a point near Leadville near the center of the State of Colorado, where the elevation approximates 10,000 feet above sea level. These headwater branches extend up to elevations of 10,500 to 12,000 feet at mountain passes across the Continental Divide, and up to 14,000 feet at the crests of the highest mountain peaks and it takes thence a southerly and southeasterly direction passing through the Royal Gorge Canyon to Canon City where the elevation is about 4,900 feet and about 100 miles below its source it passes through Canon City and Fremont County in Colorado. The area above Canon City is drained by small tributaries contributing to the stream the mountain runoff, where precipitation runs from 20 to 30 inches annually. Its source in the vicinity of Leadville is in the higher range of the Rocky Mountains with a rapid descent until it enters the more pronounced canyon sections immediately below Salida and from there to Canon City it flows through a pronounced canyon section. After it leaves the Royal Gorge Canyon immediately above Canon City it enters through a more or less rugged country, being generally hemmed in by narrow valleys and foothills, and the character of the country is characteristic until it approaches the City of Pueblo, where the valley widens out and the adjacent foothills recede, and from Canon City to Pueblo it lies at an elevation of approximately 4,300 feet and the fall of the river is about 15 feet to the mile. It thence flows from Pueblo east to the Colorado-Kansas state line, passing through country where the topography is more gentle

and tributaries entering from both sides, and the fall of the river from Pueblo to La Junta averages 9 feet per mile, and from La Junta to the state line about 7 feet per mile, and from there to Dodge City the fall of the stream is about 6.8 feet per mile, and from Dodge City to the Oklahoma state line the average fall is about 5.5 feet per mile. The area of the basin in Colorado as drained by the river amounts to 25,258 square miles and the area in Kansas is approximately 18,238 square miles. Its length in the State of Colorado is about 320 miles and in the State of Kansas about 390 miles, and after entering the State of Kansas it flows through southwestern and south central part of that state, leaving the state at its southerly boundary to enter the State of Oklahoma and flows then for several hundred miles before reaching the Mississippi River. The main course of the stream of the river in the state of Colorado traverses an arid country consisting of mountain valleys and flows across plains in a valley of shifting sand which at times and places makes it difficult to distinguish from the flat contours of the open prairie and along which course agricultural crops are grown by means of irrigation. In its course through the State of Colorado there are numerous small mountain tributaries and on the plains are some large floodwater tributaries deriving water from the slopes of the Rocky Mountains. The character of the flow of the river in Colorado is variable from year to year and season to season and day to day, and the main river at any one point may be almost without water one day and have a flood in it the next day and the following day have practically its original condition. The course of the river after it leaves the Colorado-Kansas state line and flows through Kansas is an easterly course through the town of Syracuse and Garden City at which point it takes a more southeasterly course to a point near the town of Ford, in Kansas; from thence it flows northeasterly to Great Bend, in Kan-

sas, thence southeasterly through Hutchinson and to Wichita, and thence southerly to where it crosses the State line south of Arkansas City.

The entire length of the Arkansas River from its source to its mouth is about 1500 miles. The total area of the State of Colorado in square miles is about 104,000 and in the State of Kansas about 82,000 square miles.

The slope of the country is higher in Colorado than in Kansas, and the grade of the river decreases from its headwaters down stream.

The geology in the two states is similar in respect to the character of the formations other than here stated, but the area or extent of such formation in the two states is different.

The general characteristics of the river and the valley and the country adjoining are practically uniform from the point where the river emerges from the Rocky Mountains to a point about 200 miles east of the western border of Kansas. The lands in Kansas attempting to practice irrigation are dependent upon the flow of the Arkansas River which comes into Kansas from Colorado.

THIRD.

Water Supply Of The Arkansas River And Its Tributaries. The character of the flow of the river in Colorado is widely variable from year to year and season to season, and its general flow divides itself into three groups or kinds of flow, namely; First, the perennial flow from the high mountains consisting of melting snows in the mountains, varying almost from day to day. Second, the intermittent flow, resulting from intense rainstorms on plains area, and, Third, a more or less constant flow varying slightly from year to year and from month to month due to return seepage from irrigated lands. The tributaries to the river

contribute water in measurable quantities which is due to rainfall, surface runoff and seepage return water from irrigation and in some instances from melting snows in the mountains, and which increases gradually from Pueblo, Colorado, to Dodge City, Kansas. The rainfall zones in Colorado are irregular as the result of the mountainous area, and it gradually increases as one goes east from the Rocky Mountain Range. The return flows to the river have been developed in amounts which have had, to some extent, the effect of increasing the flow of the river, the exact amount of which is uncertain at different times and does not appear definite.

There are periodical flood flows of unusable waters of summer seasons flowing in the river and continuing at times for several hours to several days which consist of sudden melting of snows in the mountain area and rainfall in the plains area and can and are to some extent captured and conserved by small reservoirs and the incompleted Coddoa dam and reservoir.

Precipitation, melting snows, temperature, evaporation and wind velocity, and the character of the soil appear to be factors which are inter-related in crop production and of sources of water supply of the Arkansas River, and in the mountainous region along the western boundary of the Arkansas River Basin the annual precipitation runs between 20 and 30 inches, which is principally in the form of snow, and going eastward to the plains region in Colorado, the precipitation in this area ranges generally between 11 and 16 inches, and passing further east to the area from the Colorado-Kansas state line to Dodge City, the precipitation ranges from 15 to 20 inches, and continuing east along the river and from where the first tributary in Kansas joins the main stream and then to the Oklahoma state line the precipitation increases 20 to 30 inches. The mean average annual

temperature in the Colorado area ranges from two to five degrees lower than in Kansas area and in Western Kansas the wind velocities are higher than in the eastern region in Colorado, which has an effect upon evaporation. The soils in both Colorado and Kansas areas are well suited to irrigation, but the character of the soil in Kansas area, which contains more silt than in the Colorado area, will hold larger quantities of water without loss by deep percolation.

FOURTH.

Both States Recognize The Need Of Water For Irrigation.

Both states from their beginning have recognized the need of water for irrigation and the using for that purpose of the public waters in their states. There were ditches and reservoir development in both states for the use of the waters of the Arkansas River and its tributaries, and as years went by both states increased their use by placing under cultivation more acreage, and it appears that Colorado increased such use more than did Kansas, and as the quantity of the water supply of the Arkansas River Basin was, and is limited, the activity in both states in developing their irrigated areas brought about the present and past controversies, over the use of water for irrigation. Their difficulties have been of a continuous nature from 1901 to the present. In 1901 the State of Kansas instituted a suit in the Supreme Court of the United States against the State of Colorado to enjoin the diversion by Colorado of the water of the Arkansas River. The Court disapproved the contentions of both parties and the case was dismissed without prejudice to the right of Kansas to institute new proceedings whenever it shall appear by saying that "if the depletion of the waters of the river by Colorado continues

to increase there will come a time when Kansas may justly say that there is no longer an equitable division of benefits, and may rightfully call for relief" and "we must consider the effect of what has been done upon the conditions in the respective states and so adjust the dispute upon the basis of equality of rights as to secure as far as possible to Colorado the benefits of irrigation without depriving Kansas of the like beneficial effect of a flowing stream". Since that decision there were suits instituted in the United States District Court of the District of Colorado by the United States Irrigation Company in its private capacity, the predecessor in interest of the defendant The Finney County Water Users Association, which was dismissed, and thereafter the defendant, The Finney County Water Users Association filed two suits in the United States District Court in the District of Colorado against Colorado ditches and reservoirs seeking to secure recognition of priority of right of the flow of the river. These two suits are now pending and are the cases against which an injunction in the present suit is sought to prevent further prosecution.

FIVE.

Depletion By Colorado Of The Water Supply Of The Arkansas River Since The Taking Of Testimony In The Case Of Kansas Against Colorado Decided In 1907. There has been since the taking of testimony in the case of Kansas against Colorado cited in 206 U. S. 46, in 1907, a material increase in the river depletion by Colorado of the water supply of the Arkansas River, which has been consumed and used by Colorado users for irrigation purposes and which has diminished the flow of the water into the State of Kansas and that, by reason thereof there has been injuries to the substantial interests in Kansas.

SIX.

The Economical Use Of The Water Supply Of The Arkansas River And Its Tributraies By Colorado And Kansas. Both states have appropriated all of the natural flow of the Arkansas River and its tributaries. The average annual natural flow of the river and its tributaries is 1,240,000 acre feet of which the average annual dependable and fairly continuous water supply and flow of the Arkansas River and its tributaries is 1,110,000 acre feet, and after considering the character of the soil, precipitation, temperature, evaporation, proper requirements of transportation of the water and an economical use of water, the quantity of water awarded annually to the respective state is sufficient and feasible in the practicable and economical use of water for irrigation and crop production in the arid areas of the two states.

SEVEN.

The irrigated acreage in the state of Colorado, of the water supply of the Arkansas River and its tributaries is 469,168 acres which has increased from the time the users of that state first began to irrigate their lands to the present, and such water supply so used is of the waters of the river and its tributaries in Colorado, and has after considering it and the return flow section resulted in the diminution of the yearly average flow at the state line.

EIGHT.

Amount Of Water Awarded To The State Of Colorado. Of the average annual dependable water supply and flow of the Arkansas River and its tributaries there should be awarded and delivered to Colorado 925,000 acre feet, and in the event of a deficiency or increase in the flow of the river and its tributaries, the then available supply in the

river and its tributaries should be prorated in relation to the dependable average annual amount so awarded to Colorado.

NINE.

Amount Of Water Awarded To The State Of Kansas. The irrigated acreage in the State of Kansas of the water supply of the Arkansas River and its tributaries is 65,028 acres, and as the Colorado water users having the first opportunity to utilize and consume the stream flow of the river before it passes into the state of Kansas, there should be awarded and delivered to the State of Kansas, at the Colorado-Kansas state line, 185,000 acre feet annually of the average annual dependable water supply and flow of the river stream for the irrigation in Kansas of the lands now being irrigated, and for lands to be irrigated, and lands irrigated from the waters of the Arkansas River prior to the time the State of Colorado increased her development in irrigation, and of which amount 150,000 acre feet of water should be delivered to the State of Kansas at the Colorado-Kansas state line during the season from April 1 to October 1, of each year, and 35,000 acre feet thereof to be delivered at the state line during the winter season from October 1 to April 1, at such times and in such amounts of the 35,000 acre feet as the same could be delivered for irrigation or storage when required by the water officials of Kansas, and in the event of a deficiency or increase in the flow of the river and its tributaries, the then available supply in the river should be pro-rated in relation to the dependable average annual amount so awarded to Kansas.

TEN.

Flood Waters Of The Arkansas River, and its tributaries are periodical and consists of melting mountain snows and intense rainfalls in the plains area, and when so flooding

the waters extend over lands for some distance from the natural stream of the river and can only be controlled by the construction of flood control dams and reservoirs in the Arkansas River.

ELEVEN.

Industrial Users. There are appropriations of water from the river in the states and used for industrial purposes and are of little if any, effect on the stream flow and water supply and the amount of water used for irrigation.

TWELVE.

Measuring Stations To Be Established. The water supply of the basin comes from two distinct sources, the mountain water supply and the plains water supply, the first is irregular in its occurrence as the rise of the streams occurring with melting snows and the other, or plains runoff being erratic, sometimes large and sometimes small. Two designated measuring points should be established, one of which will serve as an index of mountain water supply and another station selected which will serve as an index of the plains water supply. The water measured at those stations will vary up or down as those two types of the water supply in the basin varies, and the burden of benefits of wet years and dry years would be borne in the same proportion as the equitable distribution of water supply is decreed. In allowing the water supply one station should be located at Canon City, Colorado, which would serve as an index of the mountain water, and the other station, a measuring station to be located near the mouth of the Purgatoire River where the runoff at that point is practically all plains runoff and it would serve as an index of the plains water supply, and the two stations when used together would determine the amount of river flow to come down the river for delivery to Colorado and

to Kansas, and the amount of water awarded to the state of Kansas, at the state line where a station should be located and a measuring device established to determine the amount of water for delivery to the state of Kansas to be measured day by day as such water supply originates and becomes measurable as stream flow.

THIRTEEN.

Caddoa Reservoir. It is a channel dam and reservoir being constructed by the Government at Government expense and to be owned and controlled by it for the purpose of regulating the control of flood and surplus water flowing in the Arkansas River at a point approximately 50 miles in Colorado, from the Colorado-Kansas line. The project plans contemplate a reservoir when completed, of a total capacity of 655,000 acre feet, and has at present completed capacity of 270,000 acre feet. On account of present conditions the Government ceased in the final completion of it. Thereafter on December 18, 1933, the states of Colorado and Kansas undertook by written stipulation, signed by their Governors, Attorney Generals, counsel and engineers, to apportion the water supply in the Arkansas River after it was impounded in the reservoir as between the two states, with the provision that the construction and operation of the dam and reservoir shall not disturb the status quo of the diversion of he water for beneficial uses from the river by the ditches and canals then constructed and operated in both states and the stipulation was without prejudice to the claims of either party in the present case, and shall be subject to the decision of the Supreme Court of the United States as to the respective rights of the parties to water flowing in the Arkansas River or stored in the reservoir. The stipulation was not approved by the Legislature of either state or by Congress, and was not

to become effective until the dam and reservoir was completed. The reservoir has a limited life and is a temporary achievement.

FOURTEEN.

That there was instituted and still pending in the United States District Court for the District of Colorado the two suits in equity brought by the defendant. The Finney County Water Users' Association against individual Colorado Water Users of the waters of the Arkansas River, entitled The Finney County Water Users' Association against the Graham Ditch Company and others and the second suit, entitled The Finney County Water Users' Association against the Coler Ditch and Reservoir Company of Colorado and others.

Conclusions of Law.

As Conclusions of Law from the foregoing facts, the Special Master Concludes and Decides:

ONE.

That the real issue involved in the present case is the equitable apportionment of the water supply of the Arkansas River and its tributaries in such manner as to secure as nearly as possible to each state of irrigation without depriving either the beneficial effects of a flowing stream, The Arkansas River, and to grant to each state relief and protection of their equitable portion of the water supply of the Arkansas River with certainty and definiteness of the quantity, continuity and character as is measured out to them at a definite place so that delivery can be compelled.

TWO.

That the State of Colorado be awarded and delivered to it 925,000 acre feet annually of the average annual dependable

water supply of the Arkansas River and of the stream flow of the river and its tributaries, and in the event of a deficiency or increase in the natural flow of the river, the then available supply in the river and its tributaries should be prorated in relation to the dependable average annual amount so awarded to Colorado.

THREE.

That there should be awarded and delivered to the State of Kansas at the Colorado-Kansas State line 185,000 acre feet annually of the average annual dependable water supply and flow of the river stream for the irrigation in Kansas of the lands now being irrigated, and for lands to be irrigated, and lands irrigated from the waters of the Arkansas River prior to the time the State of Colorado increased her development in irrigation, and of which amount 150,000 acre feet of water should be delivered to the State of Kansas at the Colorado Kansas State line during the season from April 1 to October 1, of each year, and 35,000 acre feet thereof to be delivered at the State line during the winter season from October 1 to April 1, at such times and in such amounts of the 35,000 acre feet as the same could be delivered for irrigation or storage when required by the water officials of Kansas, and in the event of a deficiency or increase in the flow of the river and its tributaries, the then available supply in the river should be prorated in relation to the dependable average annual amount so awarded to Kansas.

FOUR.

That the flood waters of the Arkansas River and its tributaries may be controlled and applied to beneficial use by either Colorado or Kansas in the respective amounts awarded to them, as such flood water flow in the river and its tributaries in the States.

FIVE.

There is required to be established by the States of Colorado and Kansas, three modern measuring devices at stations to accurately measure the water supply of the Arkansas River and the flow of the river and its tributaries, one of which is to be located at a station at Canon City, Colorado and one to be located near the mouth of the Purgatoire River and another station where the water shall accurately be measured, located on the river at the Colorado-Kansas State line to determine the amount of water flowing in the river that should be delivered to the State of Kansas, and the expense of the construction and operation of the measuring devices shall be equally borne by the States of Colorado and Kansas, and in the event the two States are unable to agree upon one to so construct and operate the same, then the Court should appoint some one to construct and operate such measuring devices.

SIX.

That under the issues and evidence in the present suit the States of Colorado and Kansas are not denied the right to assert their claim in the present suit of an equitable proportion of the waters flowing in the Arkansas River and its tributaries.

SEVEN.

That the incompleted dam and reservoir known as the Caddoa reservoir in the channel of the Arkansas River being constructed by the Government, and the stipulation executed by certain officials, attorneys and engineers of the States of Colorado and Kansas purporting to represent said States is not binding upon either of said States, nor to be embodied in a decree in the present suit permanently adjudicating an equitable apportionment of the water supply

of the Arkansas River and its tributaries between the two States.

EIGHT.

That a permanent injunction should be granted against the defendant, the Finney County Waters Users' Association and its officers, agents and representatives, enjoining them from further prosecution of the two suits brought by The Finney County Waters Users' Association, and now pending in The United States District Court of the District of Colorado entitled the Finney County Water Users' Association against The Graham Ditch Company and others, and The Finney County Water Users' Association against The Coler Ditch and Reservoir Company of Colorado, and others, as whatever rights it or others in either of the States of Colorado and Kansas may have to the use of said waters are indissolubly linked with those of the States in which they may be, in the equitable apportionment of the said waters.

NINE.

That the States of Colorado and Kansas and each of them and their officers, agents, representatives and employees are perpetually enjoined from diverting and using any water from the Arkansas River and its tributaries in excess of the amounts awarded and herein decreed to them.

Judgment may be entered in harmony with the foregoing findings of fact and conclusions of law, containing appropriate provisions for the enforcement thereof, costs of the cause shall be divided and shall be paid by each party paying its own costs.

Dated May 7, 1943.

CHARLES C. CAVANAH,
Special Master.

SUPREME COURT OF THE UNITED STATES

THE STATE OF COLORADO,
Complainant,

vs.

THE STATE OF KANSAS AND THE FINNEY COUNTY WATER USERS' ASSOCIATION, A CORPORATION,
Defendants.

DECREE.

The cause having been originally filed in the Supreme Court of the United States and referred to the Stenographic Commissioner to take the testimony and thereafter, under Order of the Court, on May 4, 1942, referred to the Special Master, directing him to consider and to take such additional testimony as may be deemed necessary and to make findings of fact and conclusions of law and recommendations for a decree, and the evidence adduced by the parties having been heard and all evidence in the case having been considered by the Special Master, and findings of fact and conclusions of law and recommendations for a decree having been made, and the Court after considering said findings and conclusions of law and recommendations for a decree by the Special Master and the evidence and the arguments of counsel for the parties,

It Is Ordered, Adjudged and Decreed as follows:

(One.)

That the State of Colorado is awarded, granted and decreed to be the owner and entitled to the use of, and to be delivered to it 925,000 acre feet of water annually of the annual

dependable water supply and flow of the stream of the Arkansas River and its tributaries, and in the event of a deficiency or increase in the natural flow of the Arkansas River and its tributaries, the then available supply of water in the river and its tributaries shall be pro-rated in relation to the dependable amount annually here awarded and granted to the state of Colorado.

(Two.)

It is also considered, ordered and decreed that the State of Kansas is awarded, granted and decreed to be the owner and entitled to the use of and to be delivered to it at the Colorado-Kansas state line, 185,000 acre feet of water annually of the annual dependable water supply and flow of the stream of the Arkansas River, and of which amount, 150,000 acre feet thereof shall be delivered to the state of Kansas at the Colorado-Kansas state line during the season from April 1 to October 1 of each year, and 35,000 acre feet thereof to be delivered to the state of Kansas at the Colorado-Kansas state line during the winter season from October 1 to April 1, at such times and in such amounts as and when required by water officials of the State of Kansas, and in the event of a deficiency or increase in the natural flow of the Arkansas River and its tributaries, the then available supply of water in the river and its tributaries shall be pro-rated in relation to the dependable amount annually here awarded and granted to the State of Kansas.

(Three.)

It is further considered, ordered and decreed, that the flood waters of the Arkansas River and its tributaries may be controlled and applied to beneficial use by either of the states of Colorado and Kansas in the respective amounts awarded to them as such flood waters flow in the river and its tributaries in the States.

(FOUR.)

It is further considered, ordered and decreed, that there is required to be established by the State of Colorado and the State of Kansas, three modern measuring devices at stations to measure accurately the water supply of the Arkansas River and the flow of the river and its tributaries, one of which is to be located at a station at Canon City Colorado, and one to be located near the mouth of the Purgatoire River, and one to be located, where the water flowing in the river shall accurately be measured on the Arkansas River at the Colorado-Kansas State line, of the amount of water here decreed to be delivered to the state of Kansas, and the expense of the construction and operation of the measuring devices shall be equally borne by the states of Colorado and Kansas, and in the event the two states are unable to agree upon one to so construct and operate the same, then the Court shall appoint some one to construct and operate such measuring devices.

(FIVE.)

It is further considered, ordered and decreed that the states of Colorado and Kansas are granted the right in the present suit to assert their respective rights and claims of an equitable apportionment of the waters in the Arkansas River and its tributaries.

(SIX.)

It is further considered, ordered and decreed that the construction of the incompleted dam and reservoir in the channel of the Arkansas River known as the Caddoa Reservoir, and the execution of the purported written stipulation of date December 18, 1933, by the officials, attorneys and engineers of the states of Colorado and Kansas are not

binding upon either of the two states in the adjudication of an equitable apportionment of the water supply of the Arkansas River and its tributaries between the two states.

(Seven.)

It is further considered, ordered and decreed that a permanent injunction is granted against the defendant The Finney County Water Users' Association and its officers, agents and representatives, enjoining the further prosecution of the two suits brought by it and now pending in the United States District Court in the State of Colorado, entitled, The Finney County Water Users' Association against The Graham Ditch Company and others, and, The Finney County Water Users' Association against the Coler Ditch and Reservoir Company of Colorado and others, as whatever rights it or others in either of the states of Colorado and Kansas may have to the use of said waters are indissolubly linked with those of the state in which they may be in the equitable apportionment of said water.

(Eight.)

It is further considered, ordered and decreed that the state of Colorado and the state of Kansas and each of them and their officers, agents, representatives and employees be and they are hereby severally perpetually enjoined from diverting, taking and using any water from the Arkansas River and its tributaries in excess of the amounts herein awarded to them.

(Nine.)

And it is further considered, ordered and decreed that the costs of this suit be apportioned among and paid as follows: The State of Colorado shall pay its own costs and

the State of Kansas and the defendant The Finney County Water Users' Association shall pay their own costs.

Dated —, 1943.

———,

Chief Justice of the Supreme Court of the United States.

Certificate of Special Master.

I certify that volumes 1 to 36 inclusive of the testimony and the exhibits, Colorado's exhibits 1 to 189 inclusive, and Kansas' exhibits 1 to 129 were taken before the Stenographic Commissioner William S. Atwood, and were delivered to me by him, and volumes 37 to 39 inclusive of the testimony and Colorado's exhibits 190 to 216 inclusive and Kansas' exhibits 130 to 135 inclusive were admitted in evidence and taken before me as Special Master, are the records and admitted in the case of the *State of Colorado* v. *The State of Kansas* and transmitted to the Clerk of the Supreme Court of the United States.

Dated May 1, 1943.

———,

Special Master.

No. 5 Original

In the

Supreme Court of the United States

OCTOBER TERM, A. D. 1942

THE STATE OF COLORADO, COMPLAINANT,

v.

THE STATE OF KANSAS and THE FINNEY COUNTY WATER USERS' ASSOCIATION, a Corporation, DEFENDANTS.

EXCEPTIONS OF COMPLAINANT, THE STATE OF COLORADO TO THE REPORT, THE FINDINGS OF FACT, THE CONCLUSIONS OF LAW, AND THE RECOMMENDED DECREE OF THE SPECIAL MASTER.

GAIL L. IRELAND,
Attorney General,

SAMUEL L. FAIRLAMB,
Assistant Attorney General,

ARTHUR C. GORDON,
Special Assistant Attorney General.

A. W. MCHENDRIE,
HENRY C. VIDAL,
JEAN S. BREITENSTEIN,
CLIFFORD H. STONE,
Special Counsel.

PEERLESS PRINTING COMPANY DENVER

In the

Supreme Court of the United States

OCTOBER TERM, A. D. 1942

No. 5 Original

THE STATE OF COLORADO, COMPLAINANT,

v.

THE STATE OF KANSAS and THE FINNEY COUNTY WATER USERS' ASSOCIATION, a Corporation, DEFENDANTS.

EXCEPTIONS OF COMPLAINANT, THE STATE OF COLORADO, TO THE REPORT, THE FINDINGS OF FACT, THE CONCLUSIONS OF LAW, AND THE RECOMMENDED DECREE OF THE SPECIAL MASTER.

The State of Colorado, complainant above named, by Gail L. Ireland, Esq., its Attorney General, who acts in its behalf at the request and by the direction of the Honorable John C. Vivian, its Governor, objects and excepts to the Report, the Findings of Fact, the Conclusions of Law, and the Recommended Decree of the Special Master heretofore filed herein on May 24, 1943, as follows:

I.

Complainant excepts to the determination or recommendation of the Master on page 2 of the Report under the heading, "Established Principle Applicable in a Suit Between States Involving Interstate Waters", that an